



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 6, 1996

Mr. Richard L. Hamala  
Lloyd, Gosselink, Fowler, Blevins  
& Mathews, P.C.  
111 Congress Avenue, Suite 1800  
Austin, Texas 78701

OR96-2049

Dear Mr. Hamala:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102045.

The Aqua Water Supply Corporation, Inc. ("Aqua"), which you represent, received an open records request for ten categories of information relating to Aqua's water supply service to the Bastrop, Caldwell, Williamson, Lee, Fayette, and Travis County areas. You assert that the information requested in categories numbered 1, 7, 9, and 10 are excepted from required public disclosure under sections 552.101, 552.103, 552.105, 552.107, and 552.108 of the Government Code.<sup>1</sup> You have submitted a representative sample of the requested information for our review.<sup>2</sup>

Category 1 of the request seeks "any report, document or working paper produced for Aqua by or through Aqua's legal counsel or auditor associated with the review of [Aqua's] contractor, invoice billing propriety, etc." You assert that the information responsive to this request is excepted from disclosure by sections 552.103, 552.107, and 552.108. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't

---

<sup>1</sup>As you raise no exceptions to the other requested categories of information, we assume that you either have released or will release these items to the requestor.

<sup>2</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Section 552.108 generally applies to records of a law-enforcement agency or prosecutor. However, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. *See Open Records Decision No. 493 (1988)*. This office has determined that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency, section 552.108 will apply to the information gathered by the administrative agency. *Id.* You state that the information responsive to this portion of the request “has been provided to law enforcement authorities to assist with a criminal investigation and possible litigation of a criminal nature.” Thus, we believe that this information may be withheld from public disclosure pursuant to section 552.108 of the Government Code, although you may choose to release all or part of the information at issue that is not otherwise confidential by law. Gov’t Code § 552.007.<sup>3</sup>

Category 7 of the request seeks “any land purchase agreements, including real estate closing statements for the period January 1, 1994 to the present.” You assert that information responsive to this request is excepted from disclosure by section 552.105. Section 552.105(1) excepts information relating to the location of real or personal property for a public purpose prior to public announcement of the project. This exception protects a governmental body’s planning and negotiation position with respect to particular transactions. *Open Records Decision No. 357 (1982)*. Section 552.105 excepts information pertaining to negotiations for the acquisition of real or personal property, so long as the transaction has not been completed. *Open Records Decision Nos. 310 (1982), 234 (1980)*. Where a transaction has been completed, all factual information related thereto is available unless excepted by some other provision of the Open Records Act. *Id.* You seek to withhold information relating to two potential purchases of real property. We have reviewed the information provided to this office and agree that you may withhold any information relating to these potential purchases pursuant to section 552.105 at this time. However, once these transaction have been completed, you may not rely upon section 552.105 to withhold this information.

Category 9 of the request seeks “a copy of the minutes from the executive session Board meeting held on August 22, 1996.” You assert that information responsive to this request is excepted from disclosure by section 552.101. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 551.104 of the Government Code, a provision of the Open Meetings Act, makes the requested information confidential. *See Gov’t Code §§ 551.104(c)* (“The certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)”); *see also* 551.146 (public disclosure of a certified agenda of a meeting that was lawfully closed to the public is prohibited); *Open Records Decision No. 495 (1988)* (Open Meetings Act specifically makes confidential certified agendas or tapes of executive sessions). Accordingly, you must withhold the information responsive to this request under section 552.101 as information deemed confidential by law.

---

<sup>3</sup>As we resolve this portion of our ruling under section 552.108, we need not address the other exceptions you have raised.

Category 10 of the request seeks "the estimated cost of obtaining printed mailing labels of all of [Aqua's] membership (i.e. Aqua's customer mailing list)." You state that the request "goes beyond a request that requires manipulation of data under [s]ection 552.231 because it would require Aqua to serve as a printing service." However, we believe that section 552.231(b)(4) requires Aqua to provide the requestor with the cost of providing the mailing labels. Section 552.231 provides:

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) *The written statement must include:*

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form as determined in accordance with the rules established by the General Services Commission under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional ten days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of the receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or in the form in which it is available until the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and the governmental body agree; or

(2) wants the information in the form in which it is available.

(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

If Aqua has made the determination set out in subsection (a), Aqua must provide the requestor with the written statement as required section 552.231 immediately. Once Aqua has provided this written statement, Aqua will have fulfilled its obligation until the requestor notifies Aqua as provided by subsection (d).<sup>4</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref.: ID# 102045

---

<sup>4</sup>As we construe the request as one seeking only the cost of providing the mailing labels, and not a request specifically requesting Aqua to provide them, we need not address, at this time, your argument that the names and addresses of some of Aqua's customers are excepted from public disclosure pursuant to section 552.101 in conjunction with article 1446h, V.T.C.S.

Enclosures: Submitted documents

cc: Mr. Roger Dillon  
Dillon's Texas Land & Cattle Company  
RR 5, Box 660  
Bastrop, Texas 78602-9807  
(w/o enclosures)